

**Remarks**

Entry of the above-noted amendments, reconsideration of the application, and allowance of all claims pending are respectfully requested. By this amendment, claims 1 and 21 are amended. These amendments to the claims constitute a bona fide attempt by applicants to advance prosecution of the application and obtain allowance of certain claims, and are in no way meant to acquiesce to the substance of the rejections. Support for the amendments can be found throughout the specification (e.g., page 1, line 20 to page 2, line 5; page 4, lines 9-13; page 7, lines 6-13), figures (e.g., FIG. 1), and claims and thus, no new matter has been added. Claims 1-9 and 11-22 are pending.

**Claim Rejections - 35 U.S.C. § 101**

Claims 1-9, 11-15, and 21-22 were rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. The currently presented form of claims 1-9, 11-15, and 21-22 is believed allowable. For example, claim 1 now recites:

A computer-readable signal-bearing medium that comprises one or more of a floppy disk, magnetic tape, CD-ROM, DVD-ROM, hard disk drive, or electronic memory that stores a software program...

Withdrawal of the § 101 rejections is therefore respectfully requested.

**Claim Rejections - 35 U.S.C. § 112**

Claims 1-9 and 11-22 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement and for allegedly failing to comply with the enablement requirement. These rejections are respectfully, but most strenuously, traversed.

The Office Action states (section 6) that "A legacy management system is a system that manages a legacy." However, "legacy" is also defined as "of or pertaining to old or outdated computer hardware, software, or data that, while still functional, does not work well with up-to-date systems." (<http://dictionary.reference.com/browse/legacy>) Accordingly, the legacy management system may refer to an old or outdated management system for the software and/or hardware entity. For example, the first manager component may be part of a legacy management system while the second management component is part of a high availability services system.

Applicants' disclosure states (page 1, line 20 to page 2, line 5):

Some circumstances exist where autonomous control is either undesirable or impossible. In one example, upon introduction of new high availability services software into a legacy system, the new high availability services software must interoperate with the old high availability services software already in the legacy system. As one shortcoming, the autonomous control required by the new high availability services software may prevent the old high availability services software from controlling any portion of the software and/or hardware entity. In another example, the software and/or hardware entity may need a certain level of application-specific control over the management of some critical portion of the software and/or hardware entity. As another shortcoming, the autonomous control by the high availability services software may not provide the software and/or hardware entity with the desired level of application-specific control.

Applicants' disclosure further discloses (page 7, lines 6-13):

The software and/or hardware entity 102 may allow connection with the management component 106 (e.g., the high availability services software) and allow connection with the management component 104 to prevent autonomous control of the software and/or hardware entity 102 by one of the management components 104 and 106, such as, the high availability services software. For example, the high availability services software is able to peer with the management component 104 to cooperatively manage the software and/or hardware entity 102 not under the exclusive control of the high availability services software.

Since the software and/or hardware entity 102 may allow connection with both the management component 106 and the management component 104, as previously described, the autonomous control of the software and/or hardware entity 102 by either of the management component 104 (e.g., legacy management component) and management component 106 is prevented.

Withdrawal of the § 112 rejections is therefore respectfully requested.

Claim Rejections - 35 U.S.C. § 102

Claims 1, 16, and 21 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Baughman (U.S. Patent No. 6,408,399). Claims 1-9 and 11-22 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Anderson (U.S. Patent App. Pub. No. 2003/0058796). These rejections are respectfully, but most strenuously, traversed.

Applicants respectfully submit that the Office Action's citations to the applied references, with or without modification or combination, assuming, *arguendo*, that the modification or combination of the Office Action's citations to the applied references is proper, do not teach or suggest the first manager component of the legacy management system and the second manager component, that comprises high availability services system software, that are configured to concurrently share management responsibility for the software and/or hardware entity, as recited in applicants' independent claim 1.

For explanatory purposes, applicants discuss herein one or more differences between the claimed invention and the Office Action's citations to Baughman and Anderson. This discussion, however, is in no way meant to acquiesce in any characterization that one or more parts of the Office Action's citations to Baughman or Anderson correspond to the claimed invention.

Baughman (column 5, lines 18-23) discloses:

The system manager 120 and 130 also checks for and corrects errors, such as both computers 10 and 11 assuming an active state, no computer 10 or 11 in an active state, the active computer unable to access the shared disks 12 and 13, and a non-active computer with access to the shared disks 12 and 13.

Baughman discloses that an instance where both computers have access to the shared disks is an error condition. Accordingly, the computers are not configured to share management, but to instead take full control. Baughman teaches away from shared management responsibility of the disks 10 and 11 and instead teaches an active/standby relationship.

The Office Action (page 18, section 3) states:

"One interpretation of the meaning of concurrent is acting in conjunction, or cooperating. Under this interpretation, an active/standby setup fulfills a cooperating configuration."

The Office Action's discussion of "concurrent" has omitted a portion of the claim limitation. Claim 1 recites "concurrently share". While the active and standby components disclosed by Baughman may fulfill a cooperating configuration, they do not concurrently share management responsibility and instead take full control at alternate times. Baughman fails to disclose the first manager component of the legacy management system and the second manager component, that comprises high availability services system software, that are configured to concurrently share management responsibility for the software and/or hardware entity.

Accordingly, the Office Action's citation to Baughman fails to satisfy at least one of the limitations recited in applicants' independent claim 1.

Anderson (paragraph 19) discloses:

... The signaling manager receives its working instructions from the traffic manager and from the provisioning manager for each packet switch, router and interface access device of the packet network, which, among other things, enables the signaling

manager to set up and dynamically change virtual circuits, paths and channels on a real-time basis...

Anderson discloses that the signaling manager receives instructions from the traffic manager and the provisioning manager. Accordingly, the signaling manager does not share management responsibility with either the traffic manager and provisioning manager but merely acts upon their instruction as an intermediary. Anderson fails to disclose that any of the signaling manager, the traffic manager, and the provisioning manager are from a legacy management system. Anderson fails to disclose the first manager component of the legacy management system and the second manager component, that comprises high availability services system software, that are configured to concurrently share management responsibility for the software and/or hardware entity.

Accordingly, the Office Action's citation to Anderson fails to satisfy at least one of the limitations recited in applicants' independent claim 1.

The Office Action's citations to Baughman and Anderson all fail to meet at least one of applicants' claimed features. For example, there is no teaching or suggestion in the Office Action's citations to Baughman and Anderson of the first manager component and the second manager component that are configured to concurrently share management responsibility for the software and/or hardware entity, as recited in applicants' independent claim 1.

In addition, Anderson fails to disclose the limitations of dependent claim 3. Anderson fails to make any mention of a "sequence" for management operations. The Office Action's citation to Anderson discloses (para. 19):

For optimum network performance, it is necessary to decide how to configure the logical networks on top of the physical network and how to efficiently manage and allocate the physical network resources among the logical networks and to balance traffic loading.

Anderson discloses the necessity of deciding how to configure the logical networks, but not in what order the configuration should occur or by which component the decision is made.

Referring to dependent claim 7, Anderson fails to disclose the first and second manager components that dynamically negotiate the management responsibilities. The Office Action's citation to Anderson discloses (para. 21):

The traffic manager drives the signaling manager, per traffic control rules and information received from the provisioning manager, for controlling the dynamic loading of the network on a real time basis.

Anderson discloses dynamic traffic loading of the network. However, the traffic loading is not a management responsibility. Examples of management responsibilities as disclosed by Applicants comprise starting, stopping, initializing, monitoring, detecting failures, recovery, propagating state changes, and the like (page 3, lines 8-12).

Referring to dependent claims 11-13, the Office Action merely cites "high availability" from Anderson (para. 68) with no reasoning provided. Anderson discloses (para. 68):

The provisioning manager 18 is equipped with a redundant server for high availability.

It is unclear from the Office Action how a redundant server for the provisioning manager corresponds to a software and/or hardware entity that operates outside of a high availability domain (claim 11), a software and/or hardware entity connected with a high availability domain to employ one or more of the one or more second management operations of the high availability services software (claim 12), or to prevent autonomous control of a software and/or hardware entity by a high availability services software (claim 13).

For all the reasons presented above with reference to claim 1, claims 1, 16, and 21 are believed neither anticipated nor obvious over the art of record. The corresponding dependent

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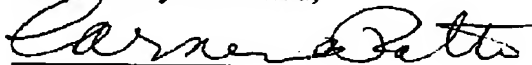
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claims are believed allowable for the same reasons as independent claims 1, 16, and 21, as well as for their own additional characterizations.

Withdrawal of the § 102 rejections is therefore respectfully requested.

In view of the above amendments and remarks, allowance of all claims pending is respectfully requested. If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney.

Respectfully submitted,



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